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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,489	01/30/2004	Anthony J.M. Garwood	CRSL120870	8474

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EXAMINER	
BECKER, DREW E	

ART UNIT	PAPER NUMBER
1794	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/769,489	GARWOOD, ANTHONY J.M.	
	Examiner	Art Unit	
	Drew E. Becker	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 September 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,5,7-18,20-23 and 25-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3,5,7-18,20-23 and 25-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-28 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 4-7, and 9-10 of copending Application No. 10/368,953 in view of D'Amelio et al. It would have been obvious to one of ordinary skill in the art to ship the products of '953 in view of D'Amelio et al since goods were commonly shipped to retail stores, and since '953 already included the step of selling the goods and transmitting information.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 3, 5, 7, 11, 18, 20-22, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Amelio et al [Pat. No. 6,430,467] view of Caveney [Pat. No. 5,038,283].

D'Amelio et al teach a method for tracking meat packages by applying a bar-code or other marking to the packaged meat for proper labeling of the contents, grouping the packages in shipping containers, transporting the shipping containers to a point of sale for display and purchase (column 10, lines 50-58), tracking of inventory between storage, shipping, and multiple points of sale (column 11, line 1-49), the meat including beef, pork, and fish (column 11, line 34), labeling the contents so that the buyer can know what is within the package (column 11, line 36). Although D'Amelio et al do not explicitly state what specific information is placed on the label, it would have been obvious to one of ordinary skill in the art to label the meat package of D'Amelio et al with information regarding the type of meat, type of cut, weight, price per pound, and total price since this was extremely well known and almost universally employed in the food packaging industry. D'Amelio et al do not recite applying a tag or mark to the container with information relating the packaged product. Caveney teaches a method for tracking items by placing barcodes on the items, placing the items in a shipping container with a barcode, recording the barcoded information in a central computer, transmitting the

information to shipping destination, and the shipping destination reading the barcodes (Figure 1). It would have been obvious to one of ordinary skill in the art to incorporate the barcoded shipping container of Caveney into the invention of D'Amelio et al since both are directed to methods of tracking products, since D'Amelio et al already included shipping containers and marking the packages (column 10, lines 50-58) as well as tracking inventory during shipping (column 11, lines 1-49), and since the marked shipping containers of Caveney provided an effective and efficient means for tracking containers and their contents before, during, and after shipping.

5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over D'Amelio et al, in view of Caveney, as applied above, in view of Schkolnick et al [Pat. No. 5,729,697].

D'Amelio et al and Caveney teach the above mentioned concepts. D'Amelio et al and Caveney do not recite computing a selling price. Schkolnick et al teach a method for buying and selling item by use of RFID tags on the packages, computing the sale price for individual packages, and displaying the sale price on the shopping cart (abstract; column 9, line 25). It would have been obvious to one of ordinary skill in the art to incorporate the pricing method of Schkolnick et al into the invention of D'Amelio et al, in view of Caveney, since both are directed to methods of providing packaged food to the consumer, since D'Amelio et al already included labeling which permitted automated tracking of the product (column 10, line 52), and since the RFID tags of Schkolnick et al provided this tracking feature as well as permitting up to date pricing information to the consumer.

6. Claims 8-10 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Amelio et al, in view of Caveney, as applied above, in view of Prusik et al [Pat. No. 6,544,925].

D'Amelio et al and Caveney teach the above mentioned concepts. D'Amelio et al and Caveney do not recite determining whether the product has exceeded a time limit outside of refrigeration, and determining the shelf life. Prusik et al teach a method for packaging meat by determining whether the product has exceeded a time limit outside of refrigeration, and determining the shelf life (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the time-temperature label of Prusik et al into the invention of D'Amelio et al, in view of Caveney, since both are directed to methods of providing packaged food to the consumer, since D'Amelio et al already included labeling which permitted automated tracking of the product (column 10, line 52), and since the time-temperature label of Prusik et al helped warn the consumer that the product had been held in unsafe conditions.

7. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Amelio et al, in view of Caveney, as applied above, in view of Woodaman [pat. No. 6,270,724].

D'Amelio et al and Caveney teach the above mentioned concepts. D'Amelio et al and Caveney do not recite testing for E. coli. Woodaman teaches a method for packaging meat and testing for E. coli (abstract; column 14, line 50). It would have been obvious to one of ordinary skill in the art to incorporate the pathogen testing of Woodaman into the invention of D'Amelio et al, in view of Caveney, since both are directed to packaged

foods, since D'Amelio et al already included labels, and since the pathogen testing label of Woodaman would have prevented the sale of tainted meat.

8. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Amelio et al, in view of Caveney, as applied above, in view of Caracciolo Jr [Pat. No. 6,551,182].

D'Amelio et al and Caveney teach the above mentioned concepts. D'Amelio et al and Caveney do not recite treating the meat with a bactericidal agent and water. Caracciolo Jr teaches a method of treating meat with a mixture of water and ozone (column 9, line 4) and packaging (column 14, line 65). It would have been obvious to one of ordinary skill in the art to incorporate the water and ozone of Caracciolo Jr into the invention of D'Amelio et al, in view of Caveney, since both are directed to methods of preparing meat, and since the ozone (column 2, line 65) of Caracciolo Jr was antibacterial and thus helped prevent contamination of the meat.

9. Claims 17 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Amelio et al, in view of Caveney, as applied above, in view of Woolley et al [Pat. No. 5,774,876].

D'Amelio et al and Caveney teach the above mentioned concepts. D'Amelio et al and Caveney do not recite using a global positioning system. Woolley et al teach a method for tracking package during shipment by use of GPS (column 59, line 60). It would have been obvious to one of ordinary skill in the art to incorporate the GPS tracking of Woolley et al into the invention of D'Amelio et al, in view of Caveney, since both are directed to methods of tracking packages, since D'Amelio et al already included tracking

and shipping (column 10, lines 50-58), and since the GPS tracking of Woolley et al would have prevented lost shipments by always providing their location.

Response to Arguments

10. Applicant's arguments with respect to claims 1, 3, 5, 7-18, 20-23, and 25-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.